

## **ARTICLE 2. LOAN GUARANTIES FOR UPGRADING UNDERGROUND PETROLEUM STORAGE TANKS**

### **RULE 1. DEFINITIONS AND REFERENCES**

#### **328 IAC 2-1-1 ----- Definitions and references: application of definitions**

The definitions in this rule apply throughout this article. All other words and phrases used in this article have the same meaning as those defined in IC 13-7-20, unless specified otherwise in this rule.

#### **328 IAC 2-1-2 ----- Definitions and references: “applicant” defined**

“Applicant” means any one (1) of the following that own or operate an underground storage tank and that apply for a loan guaranty under the upgrade loan guaranty program:

- (1) A petroleum marketer, as defined in section 9 of this rule.
- (2) A petroleum retailer, as defined in section 10 of this rule.
- (3) A political subdivision, as defined in section 11 of this rule.

#### **328 IAC 2-1-3 ----- Definitions and references: “authority” defined**

“Authority” refers to the Indiana development finance authority, which is sometimes referred to in IC 13-7-20 by the name of its predecessor, the Indiana employment development commission, or as the commission.

#### **328 IAC 2-1-4 ----- Definitions and references: “board” defined**

“Board” refers to the underground storage tank financial assurance board established under IC 13-7-20-35, which is responsible for advising the authority on the administration of the excess liability fund.

#### **328 IAC 2-1-5 ----- Definitions and references: “borrower” defined**

“Borrower” means an applicant that is successful in obtaining a guaranty under the program.

#### **328 IAC 2-1-6 ----- Definitions and references: “department” defined**

“Department” refers to the Indiana department of environmental management.

#### **328 IAC 2-1-7 ----- Definitions and references: “guaranty premium” defined**

“Guaranty premium” means a fee charged to the lender by the authority for providing the upgrade loan guaranty.

#### **328 IAC 2-1-8 ----- Definitions and references: “lender” defined**

“Lender” means the entity that shall make the loan to be guaranteed under the program.

#### **328 IAC 2-1-9 ----- Definitions and references: “petroleum marketer” defined**

“Petroleum marketer” means a business engaged in the wholesale distribution of petroleum.

#### **328 IAC 2-1-10 ----- Definitions and references: “petroleum retailer” defined**

“Petroleum retailer” means a business engaged in the retail sale of petroleum.

#### **328 IAC 2-1-11 ----- Definitions and references: “political subdivision” defined**

“Political subdivision” means any county, city, town, or township in the state of Indiana.

#### **328 IAC 2-1-12 ----- Definitions and references: “upgrade” defined**

“Upgrade” means a tank upgrading project as defined in IC 13-7-20-33.3(a) as:

- (1) the installation of a new tank to replace an existing substandard tank, including the

- removal of the existing tank; or
- (2) the installation of a leak detection system, cathodic protection, spill and overflow devices, or an interior lining for a new or an existing tank performed at a tank facility location at one (1) time or as part of an integrated construction operation.

**328 IAC 2-1-13 ----- Definitions and references: “upgrade loan guaranty fund” defined**

“Upgrade loan guaranty fund” means the underground storage tank upgrade loan guaranty fund, which is the reserve fund established by IC 13-7-20-33.3(b) to support loan guaranties and to pay expenses as described in IC 13-7-20-33.3(c). The upgrade loan guaranty fund receives funds from the excess liability fund under IC 13-7-20-33.3(g).

**328 IAC 2-1-14 ----- Definitions and references: “upgrade loan guaranty program” defined**

“Upgrade loan guaranty program” means the program established to guarantee loans for underground storage tank upgrades under IC 13-7-20-33.3.

**328 IAC 2-1-15 ----- Definitions and references: incorporation by reference**

(a) When used in this article, references to the following publication shall mean the version of that publication listed in this section. 42 U.S.C. 6991 et seq. (1984, as amended 1986) is hereby incorporated by reference.

(b) A federal statute which has been incorporated by reference does not include any later amendments than those specified in the incorporation citation. Copies of federal documents are available for sale by contacting the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783-3238. The incorporated materials are available for public review at the office of the department of environmental management.

**RULE 2. ADMINISTRATION OF THE UPGRADE LOAN GUARANTY PROGRAM**

**328 IAC 2-2-1 ----- UST upgrade loan guaranty fund: establishment, investment, and administration**

The upgrade loan guaranty fund is established as a reserve fund to be used to administer and guarantee loans under the upgrade loan guaranty program. The upgrade loan guaranty fund shall be administered by the authority.

**328 IAC 2-2-2 ----- UST upgrade loan guaranty fund: fund investment**

The treasurer of state is required to invest the money in the upgrade loan guaranty fund in a separate investment account and in the same manner as other public funds may be invested consistent with the obligations placed upon the upgrade loan guaranty fund by IC 13-7-20-33.3. Interest that accrues from the investments must be deposited in the upgrade loan guaranty fund.

**328 IAC 2-2-3 ----- UST upgrade loan guaranty fund: administration expenses**

The upgrade loan guaranty fund shall be charged with those expenses of the authority attributable and allocated to the upgrade loan guaranty program, including interest and principal payments required by loan defaults under the upgrade loan guaranty program. The funds shall be credited with the income of the authority attributable and allocated to the upgrade loan guaranty program, including guaranty premiums.

**328 IAC 2-2-4 ----- UST upgrade loan guaranty fund: fund management**

(a) The upgrade loan guaranty program shall encumber no more than the amount in the upgrade loan guaranty fund at any time, up to a maximum amount of two million dollars (\$2,000,000).

(b) If the upgrade loan guaranty fund falls below two million dollars (\$2,000,000), the

authority may request a transfer of funds from the excess liability fund to the upgrade loan guaranty fund.

**328 IAC 2-2-5 ----- UST upgrade loan guaranty fund: payment of guaranty premium and reimbursable administrative costs**

(a) At the time of the execution of the written agreement, or at such time as the authority may otherwise require, the lender shall remit to the authority the guaranty premium in an amount to be fixed by the authority.

(b) Upon the issuance of a guaranty under the upgrade loan guaranty program, any expenses incurred by the authority in connection with the guaranty shall be reimbursed to the authority by the borrower.

**328 IAC 2-2-6 ----- UST upgrade loan guaranty fund: monitoring guaranties**

(a) Beginning six (6) months after the date the guaranty agreement is executed, and every six (6) months thereafter, a lender shall submit to the authority a written report disclosing the status of the guaranteed loan.

(b) The authority shall monitor all loans for which it has provided guaranties. The authority shall maintain a list of borrowers, identifying any who have defaulted on loans guaranteed by the authority under the upgrade loan guaranty program. Whenever a default is added to the list, the revised list shall be forwarded to the department.

**RULE 3. UPGRADE LOAN GUARANTY PROGRAM COVERAGE AND ELIGIBILITY**

**328 IAC 2-3-1 ----- UST upgrade loan guaranty program: terms of guaranties**

The amount of a loan guaranty for one (1) upgrade for one (1) applicant under the upgrade loan guaranty program may not exceed two hundred thousand dollars (\$200,000). If the cost of an upgrade exceeds two hundred thousand dollars (\$200,000), the authority may guarantee a fixed percentage of the loan so that the maximum coverage does not exceed two hundred thousand dollars (\$200,000). In such a case, the guaranty would cover the same percentage of the unpaid balance of the loan for the life of the loan.

**328 IAC 2-3-2 ----- UST upgrade loan guaranty program: eligible borrowers**

An applicant for a loan guaranty under the upgrade loan guaranty program shall furnish the authority with documentation that proves to the satisfaction of the authority that:

- (1) the applicant's underground storage tank is registered; and
- (2) the annual tank registration fee has been paid.

**RULE 4. UPGRADE LOAN GUARANTY PROGRAM APPLICATION PROCEDURES**

**328 IAC 2-4-1 ----- UST upgrade loan guaranty program: approval of plan by the department**

Before applying for a guaranty under the upgrade loan guaranty program, an applicant shall obtain the department's technical approval of the steps that shall be followed in conducting the upgrade. Application shall be made on forms to be developed by the department.

**328 IAC 2-4-2 ----- UST upgrade loan guaranty program: application requirements**

(a) An applicant shall apply for a loan guaranty under the upgrade loan guaranty program, in writing, using a form provided by the authority that requires the information described in subsections (b) through (e). Each application shall be accompanied by a nonrefundable application fee of one hundred dollars (\$100).

(b) An applicant must submit the following information:

- (1) True copies of the applicant's financial statements, tax returns, or both, for the preceding three (3) years, including a financial statement that is no more than sixty (60) days old.
  - (2) True copies of the applicant's projected income statements and balance sheets for the following two (2) years.
  - (3) A month-by-month cash flow projection for the applicant for the following two (2) years, specifying the assumptions upon which the projection is based.
  - (4) Identification and explanation of relationships between the applicant and all related companies.
  - (5) Articles of incorporation and bylaws and other governing instruments of the applicant, together with a copy of any certificate of good standing from the secretary of state and, if applicable, the state where the applicant is incorporated.
  - (6) Resumes of all principals of the applicant.
- (c) An applicant must also submit evidence that the department has approved the steps to be taken in conducting the upgrade, as required in section 1 of this rule.
- (d) The application must include the following information about the lender and the proposed loan:
- (1) A loan commitment letter from the lender.
  - (2) Two (2) letters of declination from financial institution lenders that have refused to make the loan for which a guaranty is sought. These letters must state the terms the lenders have rejected (one (1) of the declination letters may be from the lender).
  - (3) Information sufficient to enable the authority to make a finding that the lender is responsible and able to service the loan properly, which might include such information as the following:
    - (A) The lender's experience in making and servicing loans, especially loans of the same type.
    - (B) Evidence that the loan is an arm's-length transaction.
    - (C) The lender's capitalization, showing that it is able to afford to make the loan.
    - (D) The lender's stake in the loan, such as a percentage of the loan that shall not be covered by the proposed guaranty and for which the lender shall be at risk.
    - (E) Any other information that the lender or the applicant believes relevant.
  - (4) A copy of any loan agreement proposed to be used for the loan.
  - (5) A description of any collateral for the loan, along with an appraisal (at forced liquidation value) prepared by a qualified appraiser.
- (e) An applicant must provide information sufficient to create a reasonable expectation that the loan guaranty shall benefit the Indiana economy. Benefits might include the following:
- (1) Creating or retaining jobs.
  - (2) Creating a circumstance that would encourage other business to locate in an Indiana community.
  - (3) Enabling community resources to be used for economic development activities.
- (f) An applicant may be required to provide other information reasonably required by the authority, its executive director, or authority staff.
- (g) A subsequent application from an applicant previously granted a guaranty under the upgrade loan guaranty program may be considered by the authority.

### **328 IAC 2-4-3 ----- UST upgrade loan guaranty program: procedures and criteria for review of applications and award of guaranties**

- (a) The executive director of the authority, or the executive director's designee, shall review each application for a loan guaranty under the upgrade loan guaranty program for completeness. The executive director, or the executive director's designee, shall make such further inquiry of the applicant as is deemed appropriate, keeping in mind the requirements

and priorities set forth in this article. The applicant shall respond to inquiries in writing.

(b) In determining whether to award a guaranty, the authority shall consider the information provided by the applicant as required by section 2 of this rule.

(c) The authority shall give priority to loan guaranty applications as follows:

(1) Highest priority shall be given to a proposed upgrade for an underground storage tank that poses an immediate threat to the environment.

(2) The authority shall assign priority to other applications using the standards established in 328 IAC 1-4.

(d) The authority may prescribe terms and conditions for any guaranty and may reject any applications under the upgrade loan guaranty program.

(e) No loan guaranty may be made under the upgrade loan guaranty program unless the authority makes written findings that:

(1) the proceeds of the loan shall be used exclusively for an upgrade to bring the applicant's underground storage tank into compliance with the requirements established under IC 13-7-20 or under 42 U.S.C. 6991 et seq.;

(2) the loan guaranty is reasonably expected to benefit the Indiana economy;

(3) the applicant cannot obtain the loan upon reasonable terms without the guaranty;

(4) the lender is responsible and able to service the loan properly; and

(5) the loan contains satisfactory provisions regarding term or maturity, insurance, repairs, alterations, default reserves, delinquency charges, default remedies, additional and secondary liens, payment of principal and interest, and payment of taxes and assessments.

(f) All guaranties granted under the upgrade loan guaranty program shall be made by the authority at its regularly scheduled meeting, or at such special meeting as the authority may call.

(g) All guaranties made by the authority shall be evidenced by a written agreement setting forth all the terms of the agreement between the borrower, the lender, and the authority; the signature of the chairman of the authority shall be evidence of the agreement of the authority, but the executive director and the secretary-manager of the authority are together empowered to execute such written agreement on behalf of the authority in lieu of the chairman.

